

**CONCURRING STATEMENT OF
COMMISSIONER PAI**

RE: Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, PS Docket No. 11-153; Framework for Next Generation 911 Deployment, PS Docket No. 10-255.

People in need of emergency assistance should not be left with the false impression that first responders are on the way, when in fact they are not. That is why I support the automatic “bounce-back” text message requirement set forth in this Report and Order. If Americans send an emergency text to 911 in a location where text-to-911 capability is not yet available, they should be notified immediately that they must contact public safety personnel in another way, such as by calling 911. This “bounce-back” requirement that we adopt today is of particular importance to deaf and hard-of-hearing Americans, who disproportionately rely on texting as a means of communication.

I also believe that the Commission possesses the legal authority to issue these rules. But I cannot support the lengthy legal analysis contained in this item, which offers a grab bag of theories, some far-reaching and questionable. For example, the Commission today claims sweeping authority to prescribe “rules that prevent the transmission of potentially misleading text messages.”¹ This remarkable assertion of power raises serious First Amendment questions and should give pause to anyone who has ever sent a “potentially misleading” text message. Similarly, the reliance on a statutory provision that empowers the Commission to implement policy recommendations made by non-governmental actors² evokes constitutional doubts dating back to the Great Depression.³ Law and prudence suggest we go no further than necessary in justifying otherwise worthwhile policy choices.

¹ Report and Order, para. 129.

² *Id.*, para. 97 (citing 47 U.S.C. § 615c(g) (“The Commission shall have the authority to promulgate regulations to implement the recommendations proposed by the [Emergency Access] Advisory Committee[.]”)).

³ See, e.g., *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 541–42 (1935) (striking down as an unconstitutional delegation of authority provision of National Industrial Recovery Act giving President power to approve “codes of fair competition” as recommended by trade or industrial associations or groups); *Carter v. Carter Coal Co.*, 298 U.S. 238, 310–11 (1936) (holding unconstitutional statutory provision granting private entities the authority to set certain labor conditions).